

Appln. No. 10/520,092
Amdt. Dated: August 7, 2007
Reply to Office action of March 28, 2007

REMARKS/ARGUMENTS

This communication is responsive to the Office Action with a mailing date of March 28, 2007. Claims 19 through 34 are currently pending. The Examiner has rejected claims 19, 23-25, 29 and 30 under 35 U.S.C. § 102(b), claims 19, 23-25, 29-31, 33 and 34 under 35 U.S.C. § 102(e), and claims 20-22, 26-28, and 35 under 35 U.S.C. § 103(a). Applicant respectfully traverses the Examiner's rejections and requests reconsideration and withdrawal of the rejection based on the following remarks.

Rejection of Claims 19, 23-25, 29 and 30 under 35 U.S.C. § 102(b)

The Examiner rejects claims 19, 23-25, 29 and 30 under 35 U.S.C. § 102(b) as being anticipated by US Patent 3,956,872 to Johnson ("Johnson"). The Examiner asserts that Johnson discloses a packaging comprising a blank having longitudinal and transverse fold lines, a stamped marking on a wall panel of the packaging blank, the marking comprising at least one center-symmetrical configuration having two straight lines having intersecting paths, wherein the marking correlates to dimensions and the geometry of the packaging as the markings are applied to a specific region of the packaging. The Examiner further asserts that since the marking is recessed into the wall panel of the packaging, it is understood that a cross-section of the marking will be U-shaped and have a substantially uniform thickness. Applicant respectfully disagrees.

Johnson does not disclose every element of Applicant's invention because Johnson fails to disclose a marking having a U-shaped cross-section. Johnson also does not disclose a marking that correlates to the dimensions and the geometry of the packaging. Johnson discloses an apparatus for applying date indicia. (col. 1, lines 8-11) Johnson discloses that the typical methods for applying date indicia to thermoplastic coated paperboard milk cartons are inking, stamping or embossing, and branding. (col. 1, lines 22-25) Applying date indicia to the surface

of paperboard does not affect the cross-section of the paperboard like the type of stamping disclosed by the Applicant, which is performed in such a way as to create a marking with a U-shaped cross-section. The methods of applying the date indicia disclosed by Johnson are meant to apply to the surface of the paperboard, especially the preferred method identified by Johnson, which is branding. Neither inking nor branding will produce a stamped marking with a U-shaped cross-section, and Johnson does not disclose a method of stamping or embossing that will generate a U-shaped cross section because it is unnecessary when applying date indicia to the surface of paperboard. Also, date indicia do not correlate to the geometry or dimensions of the packaging. Date indicia are merely visual labels to inform a consumer of the age of the contents of the packaging and do not relay any information about the dimensions of the packaging. Therefore, Johnson fails to anticipate Applicant's invention.

Rejection of Claims 19, 23-25, 29 and 30 under 35 U.S.C. § 102(e)

The Examiner rejects claims 19, 23-25, 29-31, 33 and 34 under 35 U.S.C. § 102(e) as being anticipated by US Patent Application Publication 2004/0259709 to Guidotti et al. ("Guidotti"). However, Guidotti is not prior art to Applicant's invention. Guidotti is a US Patent Application, which claims the benefit of a PCT Application filed on October 31, 2002. The current application claims priority to German Application 102 37 544.5 filed on August 16, 2002 which antedates the 102(e) date for Guidotti, October 31, 2002. A certified copy of the German Application upon which Applicant claims priority was submitted with the present application on January 4, 2005; therefore, Guidotti is not prior art to Applicant's invention.

Although the reference is not prior art to Applicant's invention, the Examiner relies on the reference and asserts that Guidotti anticipates Applicant's invention. Applicant respectfully disagrees.

Guidotti fails to disclose a marking with a U-shaped cross-section. The Examiner relies on paragraph [0046] in Guidotti as disclosing a U-shaped cross-section, but this element is not disclosed in paragraph [0046] or in any paragraph of Guidotti. Referring to Figures 3 and 4, both figures depict a cross-section of compression lines taught by Guidotti. The area in which the compression lines are formed is not U-shaped. The compression line area is flat and within the

same plane as the rest of the packaging sheet material. Guidotti discloses a method of making compression lines that do not have these characteristics because Guidotti believes creased lines having U-shaped cross-sections with a substantially uniform thickness produces inferior packaging. (paragraphs [0008]-[0012]) Thus, Guidotti does not anticipate Applicant's invention.

Rejection of Claims 20-22, 26-28, and 32 under 35 U.S.C. § 103(a)

The Examiner has rejected claims 20-22, 26-28, and 32 under 35 U.S.C. 103(a) as being unpatentable over Guidotti in view of US Patent 6,079,188 to Katayama et al. ("Katayama"). The Examiner asserts that Guidotti discloses a stamped marking having an outer rectangular shape with a stamped Z design. The Examiner admits that Guidotti does not disclose the stamped design of a rhombus or parallelogram, but asserts that it would have been obvious to one having ordinary skill in the art at the time of the invention to stamp the marking of Guidotti in various designs since Katayama suggests that it is well known in the art of packaging material to apply markings of any desired configuration. The Examiner further asserts that Guidotti discloses a packaging blank made from known packaging material and that it was well known in the art at the time of the invention to form packaging from paper material. Applicant respectfully disagrees.

As previously explained, Guidotti is not prior art to Applicant's invention. Applicant claims priority to German Application 102 37 544.5 filed on August 16, 2002, which precedes the 102(e) date for Guidotti, which is October 21, 2002. Therefore, Guidotti cannot be used in combination with Katayama to support a rejection under 35 U.S.C. § 103(a).

Although Guidotti is not prior art to Applicant's invention, the Examiner relies on its combination with Katayama and asserts that the references would have suggested to a person having ordinary skill in the art at the time the invention was made that Applicant's invention was obvious. Applicant respectfully disagrees.

Neither Guidotti nor Katayama disclose a marking having a U-shaped cross-section. Guidotti teaches the formation of fold lines in packaging material by compression and expressly

teaches away from making fold lines that have a U-shaped cross-section that is substantially uniform in thickness. In paragraphs [0008] and [0009] Guidotti identifies this type of creasing as having drawbacks. In paragraph [0024] Guidotti describes his preferred compression creasing method as creating a concave face on both sides of the compression line, which is not U-shaped. Katayama also does not disclose the use of a marking that has a U-shaped cross-section, nor does Katayama disclose a marking that correlates to the geometry and dimensions of the packaging. Katayama is concerned with detecting a mark, such as a printed pattern or a straw port, on the surface of a packaging material to control the web feed during the fabrication of packages. (col. 7, lines 56 – 59) Katayama is not concerned with the details of the marking because the marking does not correlate to any dimensional or geometric information about the final packaging. There is no suggestion or motivation in Katayama to apply markings made of stamped lines having intersecting paths, at least one center-symmetrical configuration, and a U-shaped cross-section of substantially uniform thickness. The Examiner asserts that Katayama suggests that it is well known in the art to apply markings of any desired configuration to packaging; however at Col. 6 lines 47-49, Katayama only discusses detection of a marking and does not discuss application of a marking. Katayama neither suggests nor provides any motivation to create the type of marking in Applicant's invention. Katayama also fails to overcome the express contrary teaching in Guidotti to use compression creasing and avoid lines having a U-shaped cross-section.

Thus, the combination of the references would not suggest to a person having ordinary skill in the art at the time that Applicant's invention is obvious.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant submits that the claims presented herewith are patentable over the prior art of record and in condition for allowance. Applicant respectfully solicits prompt action thereon. If any questions remain, the Examiner is invited to phone the undersigned attorney.

Respectfully submitted,

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